IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.3627 OF 2006

Anuradha Mahesh .. Petitioner.
Vs.
Mahesh G.Kutty .. Respondent.

Mr.E.A.Sasi for the petitioner.
Mr.Rajesh Parab for the respondent.

CORAM : D.B.BHOSALE, J.

DATED : 11TH SEPTEMBER, 2006

P.C.:

. Heard learned counsel for the petitioner and the respondent.

2. Rule, returnable forthwith. By consent of the parties taken up for final hearing. Mr.Parab, learned counsel waives service for the respondent.

3. By this writ petition, the petitioner has impugned the following order:

> . "The petitioner is delaying to file affidavit of evidence for last 3 consecutive dates. The petitioner has made this application since matter is ripe for hearing. She is represented by a lawyer since the beginning and if needed this application could have been made earlier O.6 Rule 17 does not allow this application and hence rejected."

4. The petitioner has filed M.J.Petition

No.A-1493 of 2004 sometime in August, 2004 wherein she made the following prayers:

> "(A) that this Hon'ble Court be pleased to order and declare that the marriage solemnized between the petitioner and the respondent on 7th September, 2003 is null and void accordingly pass the Decree of annulment of the said marriage.
>
> (B) that this Hon'ble Court be pleased to order and direct the respondent to return the ornament mentioned in para 19 of this petition to the petitioner.
>
> (C) that this Hon'ble Court be pleased to order and direct the respondent to pay Rs.One crore as compensation for mental agony, loss damage to reputation, change of status etc. caused to the petitioner as well as the marriage expenses.
>
> (D) any such other and further order as the nature and circumstances of the case may require be granted.
>
> (E) Cost of this petition be provided for.

5. The marriage of the petitioner and the respondent was solemnised on 7.9.2003. A decree of annulment was sought on the ground of impotency of the respondent. Since the period of one year as provided for under section 14 of the Hindu Marriage Act had not expired, the ground for divorce available under section 13(1)(ia) was not raised and hence the petitioner filed application for amendment under Order VI Rule 17 of the Code of Civil Procedure. There was no reason to reject the prayer for amendment of the petition as per the schedule of amendment. The

learned Judge of the Family Court has rejected the application solely on the ground of delay. Keeping the well settled position in law, insofar as an amendment of pleadings is concerned, in view, I am inclined to allow this writ petition. Hence I pass the following order:

. The application dated 28.3.2006 seeking amendment of the pleadings is allowed. The petitioner to carry out amendment as per the schedule of amendment within two weeks from today. The Family Court shall proceed with hearing of the petition and shall dispose it of expeditiously.

. Rule is, accordingly, made absolute. No costs.

(D.B.Bhosale, J.)